IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 177 OF 1999

1. Suresh Bhaskar Patil
2. Amol Bhaskar Patil
3. Atul Bhaskar Patil ..Appellants

versus

1. Mukund Tukaram Rokade
2. The Manager, New India Assurance Company, Sangli
3. Anilkumar Baburao Shelke ..Respondents

Mr. T. S. Ingle for the Appellants.

Mr. D. R. Mahadik i/b. S.R. Singh for the Respondent No.2 - Insurance Company.

CORAM : D. G. DESHPANDE,J.

DATE : 28TH APRIL,2005

ORAL ORDER :

1. Heard learned Counsel for the Appellants and Counsel for the Respondent No.2 - Insurance Company.

2. Claim petition came to be filed on behalf of the appellants in respect of the death of Bhaskar Patil in an accident which took place on 9.8.1992. The appellants claimed Rs.5 lacs, the MACT Sangli awarded Rs.3,72,200/- out of which Rs.3,47,200/-

towards loss of dependency, Rs.15,000/- for loss of consortium and Rs.10,000/- towards loss of love and affection. This appeal is filed for further enhancement.

3. Counsel for the appellants contended that at the time of accident the age of the deceased was 37 years and the Tribunal applied multiplier of 14 which according to him should be 16. He relied upon Schedule to the Motor Vehicles Act.

4. On the other hand counsel for the Insurance company contended that even though deceased was a seasonal worker in the sugar factory and his actual salary was Rs.2197.08 paise per month at the relevant time i.e. at the time of his death, the Tribunal on the assumption that if he would have been alive, he would have earned Rs.4,000/- and taken salary at Rs.2800/-. It has also come on record that the appellants who were also the claimants had 3 acres of agricultural land but even then income from the said source was not considered by the Tribunal. Further from out of average income of Rs.2822/- appropriate deduction for the amount that has been incurred by the deceased for himself has not been given. Therefore according to the advocate for the insurance company there is absolutely no case for further enhancement and in

fact according to him the compensation has been on higher side.

5. I find that submissions made by the counsel for the insurance company are according to the facts borne out by the record. When actual salary was Rs. Rs.2917.08 per month in the year 1992 i.e. the year when the accident took place, then, firstly there was no basis for the court to hold that the salary was Rs.3,400/- per month or Rs.2822/- per month. Counsel for the appellants tried to contend that the appellants have produced all the relevant certificates about enhanced salary. but the tribunal has held that those certificates were not at all clear. The fact remains that he was a seasonal worker but there is no finding that he was a permanent seasonal worker. Therefore finding of the Tribunal that the salary was Rs.2,822/- per month is factually wrong and further deduction on the basis of that salary is given to the deceased, is also not proper. However, there is no cross appeal by the insurance company. Therefore those findings cannot be disturbed. But once it is found that the basis for giving compensation at Rs.3,47,200/- was wrong then now the contention of the appellants that multiplier of 16 should have been considered, cannot be accepted. The Tribunal has given more than adequate compensation. No interference is called for. Appeal dismissed. No

order as to costs.

28.04.2005 (D.G. DESHPANDE, J.)